

L. Reby

# City of Detroit

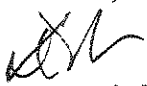
## CITY COUNCIL

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**TO:** The Honorable Planning and Economic Development Committee  
Council Member Saunteel Jenkins, Chair

**FROM:** David Whitaker, Director   
City Council Research and Analysis Division Staff

**DATE:** January 15, 2010

**RE:** Report on Legal Viability of Running its own Lottery; Examination of  
the viability of Owning and Operating a Casino.

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This Honorable Body has requested that the Research and Analysis Division (RAD) review the legal viability of the City of Detroit (City) operating its own lottery and the examination of the viability of owning and operating a casino.

RAD believes the initial assessment of both these issues should begin with the State of Michigan Constitution of 1963, Art. IV, §41 *Lotteries* which addresses both lotteries and gaming, providing:

The legislature may authorize lotteries and permit the sale of lottery tickets in the manner provided by law. No law enacted after January 1, 2004, that authorizes any form of gambling shall be effective, nor after January 1, 2004, shall any new state lottery games utilizing table games or player operated mechanical or electronic devices be established, without the approval of a majority of electors voting in a statewide general election and a majority of electors voting in the township or city where gambling will take place. This section shall not apply to gambling in up to three casinos in the City of Detroit or to Indian tribal gaming.

## LOTTERY

Addressing the legal viability of a lottery game being operated by and for the City, the State Constitution provides that the legislature may authorize and permit the sale of lottery tickets in the manner provided by law.

The legislature pursuant to the McCauley-Traxler-Law-Bowman-McNeely Lottery Act (McCauley-Traxler), MCL 432.1, et sec., proscribes the following:

### *§432.3 Definitions*

(d) “Lottery” or “state lottery” means the lottery created pursuant to this act and operated exclusively by or under the control of the bureau of state lottery.

*§432.9 State lottery; establishment and operation; maximum revenues; bids and contracts for equipment and services; prohibited activity; joint enterprises; education and treatment of compulsive gamblers.*

Section 9(1) The commissioner shall initiate, establish, and operate a state lottery at the earliest feasible and practicable time. The lottery shall produce the maximum amount of net revenues for the state consonant with the general welfare of the people. The commissioner shall solicit bids from financially responsible vendors of data processing equipment and services for the operation of the lottery and may contract with the approval of the state administrative board.

The legislature has provided pursuant to the state constitution, the law under which a lottery is authorized. Under McCauley-Traxler, a “lottery” is created and operated exclusively by and under the control of the bureau of state lottery. In addition, the law provides, “the lottery shall produce the maximum amount of net revenues for the state consonant with the general welfare of the people.” In essence, the State has exclusive control and jurisdiction of the operation and revenues generated from lotteries. In *Miller v Radikopf*, 51 Mich App 393; 214 NW 2d 897 (1974), the Court held:

[t]he state lottery has as its purpose the raising of revenue of the state, and it would seem incongruous that the Legislature would allow private lotteries to compete with the public lottery and thereby reduce the revenues earned for the state. We therefore hold that the state lottery established by the McCauley-Traxler-Bowman Lottery Act is the only legal lottery conducted in this state, and the maintenance of other lotteries is contrary to statute and public policy.” Id at 395-396

The Court’s holding solidifies the State’s exclusive right to operate a lottery, and the position that no private lottery can compete with the state in generating revenue through a lottery system. While a City lottery would arguably be a public lottery it would still

compete with and reduce the revenues earned by the state and would not be a legal lottery under McCauley-Traxler. It is therefore RAD's belief that the state of Michigan has retained exclusive jurisdiction regarding lotteries and has pre-empted any other entity from engaging in such activity.<sup>1</sup>

## CASINO

As stated above, the state's constitution requires that the City first obtain statewide voter approval, as well as local voter approval, in order for the City to own and operate a *new (fourth)* gaming casino within the city limits. And after obtaining the requisite voter approvals, a host of practical considerations would necessarily arise when exploring the viability of the City owning a casino i.e.--The start-up financial outlay would likely reach into the hundreds of millions- at a time when the City is suffering under a huge deficit; lack of expertise in managing a gaming operation would be problematic – which could necessitate the City aligning itself with career gaming professionals. Further exacerbating the ability of the City to open a new casino is the Gaming Control and Revenue Act, MCL 432.206, which provides:

(3) No more than three (3) licenses shall be issued by the board in any city.

The Gaming Control and Revenue Act clearly brings into question whether the City would be eligible to receive a gaming license. There are currently three existing licenses within the city and state law prohibits any more being issued. In order for the City to obtain a *new fourth* license, requires a change in the state law. In addition, it is RAD's belief that it is somewhat improbable that the City could obtain the statewide voter approval necessary to allow it to own and operate a *new* casino. If such approval was granted it would quite possibly open the door for a multitude of other cash strapped communities to seek gaming establishments diluting any positive revenue stream that the city might hope to receive. The only alternative would be for the City to purchase an existing casino.

With regard to the purchase of an existing casino by the City, it is RAD's understanding that at the present time, the only existing casino on the market is the Greektown Casino, which is currently undergoing Chapter 11 reorganization in bankruptcy court. In order for the City to engage in the purchase of the Greektown Casino, the City would have to secure financing to cover approximately \$800 million for the purchase. The \$800 million cost is based upon the current debts owed by Greektown Casino to its creditors. The debts

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<sup>1</sup> The operation of a lottery has been retained exclusively by the State. However, the Lottery Commission determines who can sell lottery tickets. Retailers receive a 2% cashing commission on tickets claimed at their store for prizes up to \$600.00 and a 2% bonus commission up to \$2,000 on prizes over \$600.00. In 2004, the Lottery paid an average of \$13,651 in commissions per retailer. Over 40 of the 10,651 retailers hit the \$1 million sales mark in 2004, receiving some \$60,000 in sales commissions. Whether the City of Detroit can become a retailer may be an issue to look into, however, it would require a more extensive review of a number of factors including but not limited to statutory provisions regarding the selection of retailers; potential conflicts with the state, current retailers, and the development agreements with the three casinos.

include a minimum \$550 million to the Senior Secured Lenders (Merrill Lynch); \$190 million to the Greektown Noteholders (Oppenheimer); and \$30 million dollars owed the unsecured local investors.

RAD does not have the expertise to ascertain whether the City is in a position to finance a nearly \$800 million dollar purchase, however, it could be argued, if the City could finance that amount, it may be better for the City to secure financing for the current deficit of over \$300 million. In addition, it should be noted as a reminder, the City is a public body not generally engaged in the gaming industry. The Greektown Casino was an entity run by those whose sole purpose was dedicated to the business of running a casino and it still ended up in bankruptcy. In gambling vernacular the house usually wins, sometimes as we are currently witnessing, it loses.